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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,840	03/22/2004	Darren R. Sherman	212/369	4148

23371 7590 03/31/2006

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EXAMINER

DEMILLE, DANTON D

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 03/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/806,840	SHERMAN ET AL.	
	Examiner	Art Unit	
	Danton DeMille	3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date. _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Terminal Disclaimer***

It is noted that the terminal disclaimers filed 26 January 2006 were not approved because they are not signed by an attorney of record. An attorney or agent, not of record, is not authorized to sign a terminal disclaimer in the capacity as an attorney or agent acting in a representative capacity as provided by 37 CFR 1.34 (a). See 37 CFR 1.321(b) and/or (c). Therefore the following is repeated and made final.

Double Patenting

Claims 1-17 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 of U.S. Patent No. 6,447,465. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to leave out the details of the clutch, for example.

Claims 1-17 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-40 of U.S. Patent No. 6,709,410. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to modify the patent claims to leave out the details of the means for sensing slack take-up.

Claims 1-17 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6 of U.S. Patent No. 6,616,620. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to leave out the details of the drive train.

Claims 1-17 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-24 of U.S. Patent No. 6,869,408. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to leave out the details of the abdominal belt and drive means.

Specification

The specification remains objected to under 35 U.S.C. § 112, first paragraph, as failing to provide an adequate written description of the invention.

There appears to be no support in the specification for the subject matter of claim 8. Where is support for the brake to continuously slow the movement of the drive spool as recited in claim 8?

Claim Rejections - 35 USC § 102

Claims 1-17 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Lach et al. '164.

Lach teaches everything including a brake capable of holding the belt tensioning means in a tightened state about the chest. In the line spanning columns 11 and 12 Lach teaches "a suitable electrical holding circuit to cause the electric motor, for example, to stop with the socket 172 in the desired maximum-tautness or maximum-looseness position." This would comprehend the claimed brake, momentarily hold and momentarily prevent movement of the belt.

Lach also teaches column 12, lines 21-23, "elementary microprocessor circuits may be preferred. High reliability of these systems is of great importance." Elementary microprocessors inherently include memory for storing programs. Programs that are used to perform the operations of the device. That is the purpose of using microprocessors in Lach is to provide high

reliability of the systems in operation. Therefore Lach comprehends the claimed controller for controlling operation of the motor and brake to cause repeated cycles of tightening of the belt to a set threshold of tightness, momentarily hold the belt and release the belt. All of these functions are taught by Lach and inherently provided by the microprocessor.

Regarding claims 10, 11, 14-17, Lach teaches using indicia 116, 118 on the band 12 to know how far the band has traveled. The band is initially wrapped around the chest of the patient and the indicia is marked, the longitudinal distance traveled is another parameter that is used to determine the amount of pressure applied column 7, lines 59 through column 8 line 27. This would appear to comprehend the claimed determining the threshold of tightness based on the maximum take-up of the belt and based on the measured change in the size of the patient's chest circumference. Once the belt is paced around the chest of the patient, the indicia marks the initial size of the patient's chest and the distance the belt traveled also determines the change of circumference of the patient's chest.

Response to Arguments

Applicant's arguments filed 26 January 2006 have been fully considered but they are not persuasive.

Applicant argues that Lach fails to disclose a controller programmed to momentarily hold the belt. The examiner respectfully disagrees. Lach teaches the microprocessor may be preferred to perform the operations of controlling the system. The electrical holding circuit Lach teaches is one of the functions that the microprocessor would be programmed to perform. Lach teaches motor means 170 for operating the device including a suitable electrical holding circuit to cause the electric motor to stop with the socket in the desired maximum tautness. Lach then

concludes the description of the operation of the motor with the provision of using a microprocessor in which to control these systems. Lach would appear to anticipate the claimed invention.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danton DeMille whose telephone number is (571) 272-4974. The examiner can normally be reached on M-F from 8:30 to 6:00 EST.

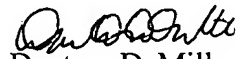
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson, can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

Art Unit: 3764

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

30 March 2006


Danton DeMille
Primary Examiner
Art Unit 3764